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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/635,994

08/09/2000

Howard Dernehl

DERN-00101

5407

28960 7590 10/20/2008
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EXAMINER

ALVAREZ, RAQUEL

ART UNIT

PAPER NUMBER

3688

MAIL DATE

DELIVERY MODE

10/20/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/635,994

Applicant(s)

DERNEHL ET AL.

Examiner

Raquel Alvarez

Art Unit

3688

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 02 October 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: _____.

Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Raquel Alvarez/
Primary Examiner, Art Unit 3688

Continuation of 11. does NOT place the application in condition for allowance because: Applicant argues that there is no hint, teaching, or suggestion within recommend-it that the first user only receives a reward once a purchase is made by a second user, where the purchase by the second user is in response to a recommendation sent by the first user. The Examiner wants to point out that the Examiner has taken Official Notice that is well known for an existing customer to recommend a person to a service that he or she is familiar with and for the customer to receive a reward when the recommended user signs up for the service. For example, Banks and the like will give existing customer discounts if the existing customer recommends a family or friend that becomes a member of the institution such a modification would allow the institution to give away incentives to existing customers that recommend prospective customers that results in sale.

Applicant argues that the claimed limitations are still further differentiated from the combination of recommend-it and MileNet in that two separate purchases are made. First, the first party must make a purchase in order to be eligible to make the recommendation. Specifically, the claimed limitations are directed to "transacting a purchase for a marketable entity by a first party" and "offering a reward to the first party in response to the first party purchasing the marketable entity." The first party is only provided the reward once the second party makes a purchase of the marketable entity recommended by the first party. The Examiner wants to point out that the Official Notice cited meets this limitations. As pointed above, Banks and the like will take recommendations from existing customers and will give their existing customers an incentive such as free checking if the person recommended by the existing customer becomes a member with the institution. Recommending a person to the bank in order for the new member to start transaction with the bank. The Existing member only receives a reward if the new person opens up a checking or savings account with the institution, the checking or savings account being the marketable entity.

Applicant argues that recommend-it and MileNet teach against purchasing a marketable entity because both recommend-it and MileNet explicitly teach a free service. The Examiner wants to point out that recommend-it and MileNet do not teach away for making purchases because as clearly taught by MileNet, the website makes money from the advertisers and therefore motivating(users to make purchases by the use of advertisements on the recommended website. Although, the purchases are not for the marketable entity (i.e. Web Deck software per se), the references do not teach away from making purchases in general. In addition, the Examiner wants to point out that the claims were rejected under the doctrine of 103. opportunity to make the recommendation in response to the first party making the purchase of the marketable entity to be recommended. Second, the first party is only provided the Applicant argues that recommend-it does not teach offering a reward in exchange for a recommendation. The Examiner wants to point out that recommend-it.com wasn't cited for teaching such limitation but Milenet was the cited reference to teach a pyramid type of incentive wherein the first user will increase their Milenet points based on friends and family installing and using Milenet. Applicant argues that the combination of recommend-it and Milenet do not teach transacting a purchase for a marketable entity. The Examiner wants to point out that the combination of Recommend-it.com and MileNet teach a first user using and installing software and then recommending it to a second user. The references are silent as to if the software is purchased or not by the users but it would make sense and would have been obvious to have replaced a non-purchase based referral system with a purchased-based system and provide the same motive to the users which is to receive a benefit for recommending an item or service to a second user regardless if the item has been purchased or not which is taught by the combination of recommend-it.com and Milenet.

Applicant argues that recommend-it.com does not teach a recommendation that includes an offer to transact an exchange where the offer is included within the recommendation itself. The Examiner disagrees with Applicant because in recommend.com, the second user receives an e-mail detailing the software called WebDeck. The e-mail itself is the offer to transact or to carry on business with webdeck.com regardless if the service is free or not. In addition as stated above, the example used by the Examiner teaches recommending to a friend to start a checking or bank account with an institution.

Applicant argues with respect to claim 9 that the references do not teach the step of forwarding the first e-mail message to the second party and the step of forwarding the authenticating e-mail message to the provider are performed as the result of a single mail command initiated by the first party." The examiner wants to point out that in Recommend-it.com, the first user sends a message to a second user detailing the site and would include a short description identifying the ads, this ads goes through the service provider before it is transmitted to the second party.

With respect to claim 28, the Examiner wants to point out that the combination of references in addition to the Official Notice teaches the claimed invention.